

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**AND****THE HONOURABLE MR.JUSTICE B.PUGALENDHI****H.C.P(MD)Nos.8 and 13 of 2019**

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H.C.P. (MD)No.8 of 2019

Ponesakki

... Petitioner

Vs.

1.State of Tamil Nadu,
represented by the Principal Secretary to
Government,
Home, Prohibition and Excise Department,
Fort. St.George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in M.H.S.Confdl No.150/2018, dated 21.12.2018, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Ponesakki, aged about 27 years, S/o Mani, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

H.C.P. (MD)No.13 of 2019

Esakkimuthu

... Petitioner

Vs.

1.State of Tamil Nadu,
represented by the Principal Secretary to
Government,
Home, Prohibition and Excise Department,
Fort. St.George,
Chennai-600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,



Tirunelveli.

3. The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the entire records connected with the detention order passed in M.H.S.Confdl No.151/2018, dated 21.12.2018, on the file of the second respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Esakkimuthu, aged about 22 years, S/o Mani, now detained at Central Prison, Palayamkottai, before this Court and set him at liberty forthwith.

For Petitioner
in both petitions : Mr.N.Pragalathan

For Respondents
in both petitions : Mr.K.Dinesh Babu
Additional Public Prosecutor

* * * * *

COMMON ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

Both the Habeas Corpus Petitions are taken up together and disposed of by this common order, as the impugned orders of detention came to be clamped based on the same ground case.

2. The detenu themselves are the petitioners and challenging the impugned order of detention dated 21.12.2018 passed by the second respondent, under Section 3(1) of Dangerous Activities of Bootleggers, Drug-offenders, Forest-offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) and branding them as 'Goonda' in M.H.S.Confdl No.150/2018 and M.H.S.Confdl No.151/2018 respectively, they have filed the present Habeas Corpus Petition.

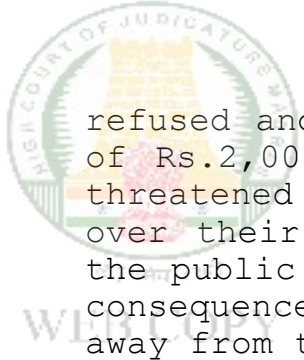
3. A perusal of the grounds of detention dated 21.12.2018 would disclose among other things that the detenu came to adverse notice in the following three cases:

(i) **Cr.No.23 of 2016** on the file of Kalakad Police Station, under Sections 294(b), 342, 323, 324 and 307 I.P.C.

(ii) **Cr.No.368 of 2018** on the file of Kalakad Police Station, under Sections 294(b), 393, 511 and 506(ii) I.P.C.

(iii) **Cr.No.369 of 2018** on the file of Kalakad Police Station, under Section 302 I.P.C.

4. It is further stated in the grounds of detention that on 12.11.2018, the detenu and his associates demanded money from the defacto complainant namely Rathinakumar for expenses and it was



refused and he was abused with filthy language and also took a sum of Rs.2,000/- from his pocket and when it was questioned, he was threatened with dire consequences and also brandishing the aruval over their head and when the defacto complainant raised an alarm, the public gathered thereby and they were also threatened with dire consequences and thereafter, the detenu and their associates fled away from the scene of occurrence. Kalakad Police Station, based on the complaint given by the defacto complainant, registered a case in Cr.No.378 of 2018, for the commission of offences under Sections 294 (b), 387 and 506(ii) I.P.C. The detenu were arrested on 15.11.2018 and produced before the Court of Judicial Magistrate, Nanguneri and on the same day, they were remanded to judicial custody and their remand period was extended till 28.12.2018.

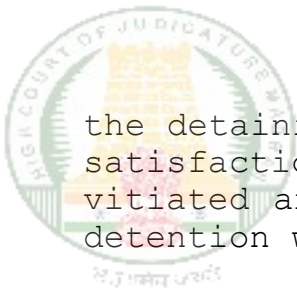
5. The detaining authority on being satisfied with the materials placed by the sponsoring authority that the activities of the detenu are prejudicial to the maintenance of public order, clamped the order of detention and making a challenge to the same, the present Habeas Corpus Petitions have been filed by the petitioners.

6. The learned Counsel appearing for the petitioners has drawn the attention of this Court to paragraph No.6 of the grounds of detention and would submit that both detenu are in custody in connection with the second and third adverse case as well as in the ground case and while arriving at a subjective satisfaction that there is a real and imminent possibility of the detenu being coming out on bail and they would indulge in such activities which are prejudicial to the maintenance of public order, no material whatsoever has been produced in respect of two adverse cases and therefore, the subjective satisfaction arrived at by the detaining authority is vitiated and hence, prays for quashment of the impugned orders of detention.

7. Per contra, the learned Additional Public Prosecutor appearing for the State has drawn the attention of this Court to the counter affidavit filed by the second respondent and would submit that the detaining authority, on proper application of mind, has taken into consideration all the materials and the report submitted by the sponsoring authority, has passed the detention orders and hence, prays of dismissal of the Habeas Corpus Petitions.

7. This Court has considered the rival submissions and perused the materials placed before this Court.

8. A perusal of paragraph No.6 of the grounds of detention would disclose that in respect of two adverse cases, the detenu are under incarceration and in order to arrive at a subjective satisfaction that there is a real and imminent possibility of the detenu being coming out on bail and they would indulge in such activities which are prejudicial to the maintenance of public order, no material whatsoever is placed by the sponsoring authority before



the detaining authority. In the absence of the same, the subjective satisfaction arrived at by the detaining authority is wholly vitiated and therefore, on that sole ground, the impugned orders of detention warrant interference.

9. In the result,

(i) H.C.P.No.8 of 2019 is allowed and the order of detention in M.H.S.Confdl No.150/2018, dated 21.12.2018 passed by the second respondent, is quashed and the detenu namely Ponesakki, S/o Mani is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

(ii) H.C.P.No.13 of 2019 is allowed and the order of detention in M.H.S.Confdl No.151/2018, dated 21.12.2018 passed by the second respondent, is quashed and the detenu namely Esakkimuthu, S/o Mani is directed to be set at liberty forthwith, unless his remand/detention is required, in accordance with law, in connection with any other case/proceedings.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort. St.George,
Chennai-600 009.
- 2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.
- 3.The Superintendent of Prison,
Central Prison,
Palayamkottai, Tirunelveli.
- 4.The Joint Secretary to Government,
Public (Law and Order),
Fort St.George, Chennai 9.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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